

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 SCA-01 JUSE-00 SCS-03 SY-10

DRC-01 RSC-01 PM-07 /052 W

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P 051611Z FEB 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0215

C O N F I D E N T I A L SECTION 01 OF 02 BONN 01925

E.O. 11652: GDS

TAGS: PFOR, GW

SUBJECT: FRG COURT SUBPOENA FOR TESTIMONY OF RETIRED
EMBASSY MAAG OFFICER IN PENDING LIBEL ACTION IN FRG

REF: PFUND-MALMBORG (L/M/SCA) LETTER OF JANUARY 29,
1974

1. EMBASSY INFORMED THAT FORMER MAAG OFFICER DE SANTO, NOW RETIRED AND RESIDING IN BONN AND REPRESENTING LTV, HAS RECEIVED COURT REQUEST (AMOUNTING TO SUBPOENA) TO APPEAR IN BONN COURT FEBRUARY 28 TO TESTIFY IN LIBEL ACTION OF FORMER MAGNAVOX SALES AGENT PISCHL, AUSTRIAN NATIONAL, AGAINST FRG DEFENSE MINISTRY. LIBEL ACTION AGAINST MINISTRY AND ALSO AGAINST HEAD OF MINISTRY'S INVESTIGATION SECTION STEMS FROM FRG/MOD DISMAY AT CONTRACT PRICE PAID FOR CERTAIN MOBILE RADIO EQUIPMENT PRODUCED AND SOLD TO FRG BY MAGNAVOX. FRG/MOD BELIEVES PRICE WAS TOO HIGH. IN 1970 AT MEETING OF REPS OF FRG/MOD, MAGNAVOX AND EMBASSY, MAGNAVOX AGREED TO PAY FRG \$400,000 ESSENTIALLY TO GET OFF FRG BLACKLIST, AGREEING AT SAME TIME NO LONGER TO USE PISCHL AND HIS SUPERIOR, JAMES A. MCINNIS, US NATIONAL, AS THEIR AGENTS VIS-A-VIS FRG FOR SALES. MCINNIS AND PISCHL HAVE SINCE THAT TIME BEEN ON INTERNAL MOD LOOKOUT LIST. AS EMBASSY UNDERSTANDS IT, PISCHL'S LIBEL ACTION IS BASED AT LEAST IN PART ON ALLEGATION THAT FRG/MOD AND HEAD OF ITS INVESTIGATORY SECTION IN INFORMAL MEETING AFTER
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1970 SETTLEMENT, INDICATED TO EMBASSY AND MAGNAVOX REPS

THAT MOD SUSPECTED TWO AGENTS OF BRIBERY IN CONNECTION THIS CONTRACT AWARD. SUBPOENA INDICATES DE SANTO IS TO BE HEARD AS WITNESS WHETHER MOD INVESTIGATING SECTION HEAD DURING DISCUSSION OF FEBRUARY 2, 1972 (INFORMAL POST-SETTLEMENT MEETING) REFERRED TO THE CONTINUING SUSPICION OF BRIBERY.

2. DE SANTO HAS INFORMALLY INDICATED THAT HE WOULD PERSONALLY PREFER NOT TO TESTIFY, STATING THAT HE RECALLS MOD REPS AT INFORMAL MEETING REQUESTING THAT IF ANY INDICATION OF BRIBERY TURNS UP, MOD WOULD APPRECIATE BEING INFORMED IN ORDER TO FACILITATE THEIR OWN INQUIRIES. DE SANTO WAS ALREADY INFORMED EARLIER BY EMBASSY REP THAT IN VIEW FACT HE WAS HOLDER OF RED DIPLOMATIC ID CARD ISSUED BY FRG FOREIGN OFFICE WHILE WITH MAAG AT EMBASSY, HE ENJOYED DIPLOMATIC IMMUNITY RE ACTS PERFORMED BY HIM IN EXERCISE OF HIS FUNCTIONS AS MEMBER OF EMBASSY AND BY REASON SECOND SENTENCE OF ARTICLE 39(2) OF VIENNA CONVENTION IMMUNITY APPEARS TO CONTINUE EVEN AFTER CESSATION OF SUCH FUNCTION, THUS MAKING HIM IMMUNE FROM OBLIGATION TO TESTIFY.

3. GENERAL WAGSTAFF, CHIEF MAAG, PREPARED TO HAVE IMMUNITY WAIVED TO PERMIT DE SANTO TO TESTIFY THIS CASE IN INTEREST OF OPENNESS AND SEEING JUSTICE DONE. HOWEVER, WITH EXCEPTION OF CHIEF MAAG, EMBASSY BELIEVES THAT CIRCUMSTANCES OF CASE PRESENT FAIRLY CLASSICAL

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FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0216

C O N F I D E N T I A L SECTION 02 OF 02 BONN 01925

REASONS FOR MAINTAINING IMMUNITY: (1) TESTIMONY WOULD BE WITH RESPECT TO STATEMENTS MADE AT MEETING DURING COURSE OF OFFICIAL EMBASSY BUSINESS; (2) POSSIBLE EFFECT OF DE SANTO'S TESTIMONY TO SUPPORT MEMCON (AVAILABLE TO PISCHL AND MOD) OF MAGNAVOX OFFICIAL ALSO PRESENT AT INFORMAL MEETING CONCERNING STATEMENT BY MOD REPS ABOUT BRIBERY SUSPICION AND TO SUPPORT CHARGES OF PLAINTIFF PARTICULARLY IN COURSE OF SKILLED QUESTIONING, UNLESS DE SANTO TESTIMONY COULD HELP DEFENDANTS TO PROVE THAT NO MALICIOUS INTENT WAS INVOLVED IN MOD REP STATEMENT (FACTS HERE ARE CORRECT AND NOT AS CONTAINED IN REF LETTER); (3) WAIVER COULD LEAD COURT TO EXPECT EMBASSY TO WAIVE IMMUNITY OF PRESENT MAAG OFFICIALS CHARGED WITH THIS MATTER AND TO MAKE AVAILABLE ITS FILES ON THIS MATTER TO COURT AND PARTIES; AND (4) WAIVER MIGHT LEAD PARTIES TO FUTURE DISPUTES AND FRG COURTS TO EXPECT EMBASSY TO WAIVE IMMUNITY OF PERSONS ENTITLED THERETO AND TO MAKE RELEVANT EMBASSY FILES AVAILABLE.

4. ACTION REQUESTED: DEPARTMENT'S CONFIRMATION ASAP OF DE SANTO'S IMMUNITY UNDER VIENNA CONVENTION; INSTRUCTIONS WHETHER IMMUNITY SHOULD BE WAIVED TO PERMIT DE SANTO TESTIMONY THIS CASE AND, IF SO, POINTS TO BE USED IN CONNECTION WITH NOTIFICATION THEREOF, AS WELL AS CONFIDENTIAL

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ANY RESTRICTIONS ON SCOPE OF TESTIMONY TO BE BROUGHT TO ATTENTION OF FRG AND/OR DE SANTO AND WHETHER EMBASSY REP SHOULD BE IN COURT DURING DE SANTO TESTIMONY. ALSO REQUEST INSTRUCTIONS WHETHER EMBASSY FILES ON THIS MATTER SHOULD BE MADE AVAILABLE TO DE SANTO OR COURT OR PARTIES TO ACTION IF REQUESTED, AND UNDER WHAT CONDITIONS.

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